



HUBERT H. HUMPHREY, III  
ATTORNEY GENERAL

# STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

ST. PAUL 55155

October 11, 1984

US EPA RECORDS CENTER REGION 5



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931674

ADDRESS REPLY TO:

ATTORNEY GENERAL'S OFFICE  
POLLUTION CONTROL DIVISION  
1935 WEST COUNTY ROAD B-2  
ROSEVILLE, MN 55113  
TELEPHONE: (612) 296-7342

## EXPRESS MAIL

Robert E. Leininger  
U.S. EPA - Region V  
230 S. Dearborn (EWPE)  
Chicago, Illinois 60604

NON-RESPONSIVE

Re: U.S., et al v. Reilly Tar & Chemical Corp.  
File No. Civ. 4-80-469

Dear Bob:

Because my secretary made an exceptionally extraordinary effort on the wordprocessor this morning, we have been able to give you this draft Partial Consent Decree for your edit and review. Because of the brief that the State must submit to Judge Magnuson tomorrow, I will have no chance to look through this today or tomorrow. I have not tried to reletter or renumber the parts or the many cross-references to parts in this draft. If you will make those corrections, you could call Mary Ann with those tomorrow.

Very truly yours,

STEPHEN SHAKMAN  
Special Assistant  
Attorney General

SS:mah

Enc.

cc: Deborah Woitte (w/enc.)  
David Hird (w/enc.)

10/11/84 DRAFT

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

and

STATE OF MINNESOTA, by its  
Attorney General Hubert H. Humphrey, III,  
its Department of Health, and its  
Pollution Control Agency,

Plaintiff-Intervenor,

v.

REILLY TAR & CHEMICAL CORPORATION;  
HOUSING AND REDEVELOPMENT AUTHORITY  
OF ST. LOUIS PARK; OAK PARK VILLAGE  
ASSOCIATES; RUSTIC OAKS CONDOMINIUM  
INC.; and PHILIP'S INVESTMENT CO.,

Defendants.

and

CITY OF ST. LOUIS PARK,

Plaintiff-Intervenor,

v.

REILLY TAR & CHEMICAL CORPORATION,

Defendant.

and

CITY OF HOPKINS,

Plaintiff-Intervenor,

v.

REILLY TAR & CHEMICAL CORPORATION,

Defendant

Civil No. 4-80-469

PARTIAL  
CONSENT DECREE

PARTIAL CONSENT DECREE

✓ The parties having STIPULATED and AGREED that a <sup>partial</sup> judgment may be entered in this action, incorporating the following terms and conditions, and the Court being fully advised in the premises, now before the taking of any testimony and upon the pleadings herein, it is hereby ORDERED, ADJUDGED AND DECREED:

A.

JURISDICTION

The Court has jurisdiction of the subject matter of this action pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1345, 42 U.S.C. § 6973, 42 U.S.C. §§ 9606, 9607, and 9613, and the doctrine of pendent jurisdiction, and has jurisdiction over the parties herein.

B.

PARTIES

The parties to this Partial Consent Decree are:

1. The UNITED STATES OF AMERICA on behalf of the United States Environmental Protection Agency ("United States");
2. The STATE OF MINNESOTA, by its Attorney General Hubert H. Humphrey, III, its Department of Health and its Pollution Control Agency ("State");
3. REILLY TAR & CHEMICAL CORPORATION ("Reilly"), an Indiana corporation;

4. The CITY OF ST. LOUIS PARK ("St. Louis Park"), a municipal corporation organized and existing under the laws of the State of Minnesota;

This Partial Consent Decree shall apply to and be binding upon the parties, their officials, officers, directors, agents, servants, employees, successors and assigns and upon all persons, firms, subsidiaries and corporations acting under or for the parties.

C.

BACKGROUND

1. From 1917 until 1972, Reilly was engaged in the business of coal tar distillation and pressure treatment of wood products at its plant site at 7200 Walker Street, St. Louis Park, Hennepin County, Minnesota (hereinafter "the site"). The site encompassed an eighty (80) acre tract, whose legal description is Lots 25 through 48, inclusive, Block 306, Rearrangement of St. Louis Park, Lot 1, Auditor's Subdivision No. 281.

2. On or about September 4, 1980, the United States commenced this action by filing a complaint under section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6973, alleging, inter alia, the existence of an imminent and substantial endangerment to health and the environment due to the handling, treatment, storage, transportation, disposal and presence of hazardous substances, pollutants or contaminants at

the site. On or about October 15, 1980, the State and the City of St. Louis Park were granted leave to intervene in the RCRA Section 7003 claim and to assert additional claims under Minnesota law. On or about June 16, 1981, the City of Hopkins was granted leave to intervene in the RCRA Section 7003 claim and to assert additional claims under Minnesota law.

3. On or about September 9, 1981, the United States filed an amended complaint, alleging in addition to the RCRA § 7003 claim, claims under sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606 and 9607.

4. On or about May 27, 1981, the State filed an amended complaint, asserting claims under section 7003 of RCRA, 42 U.S.C. § 6973, section 107 of CERCLA, 42 U.S.C. § 9607, Minn. Stat. §§ 115.061, 115.07, 115.071, and Minnesota Rule WPC 4(b) [Minn. Rule part 7100.0020], and Minnesota common law.

5. On or about August 31, 1981, the City of St. Louis Park filed an amended complaint alleging, inter alia, claims under Section 7003 of RCRA, 42 U.S.C. § 6973, Section 107 of CERCLA, 42 U.S.C. § 9607, Minn. Stat. Chapter 116B, and Minnesota common law.

6. The United States, the State, and the Cities of St. Louis Park and Hopkins have alleged that Reilly discharged hazardous substances, pollutants and contaminants on the site, into a deep well on the site (well "W23"), and, via its drainage system, to a wetland south of the site. These parties further

CLIFFS - DOW 4106 CERCLA CONSENT ORDER ISSUED

Lexander

As I walked through my life  
not alone  
not afraid  
but

10/10

Dr. 8/1/84 AC was issued pursuant  
to 5 (b) of CEA 11 by U.S. EPA Reg. II which  
reg. 11.10 to input of AC and SIP 10+15  
in accordance with HOD

Any great concern should be limited to within  
P.C. Area. Also see P.C. for copy of the time of the

allege that the hazardous substances, pollutants and contaminants from Reilly's operation have contaminated both near surface formations and deep bedrock aquifers in the St. Louis Park area through the flow of contaminated water down multi-aquifer wells and other migration beneath the ground surface. Continuing releases of the substances into the ground water are alleged.

7. Reilly, in its answers to the various complaints referenced above, has denied and continues to deny liability, has raised several affirmative defenses, and has asserted a counterclaim against St. Louis Park.

8. Respondent shall provide written notification to U.S. EPA within 3 days of completing construction of the GAC treatment system pursuant to the approved design. Following receipt of such notification, U.S. EPA will inspect the system, and Respondent shall demonstrate that the system has been constructed and operates in accordance with the approved design.

9. Following inspection of the treatment system, U.S. EPA will notify Respondent in writing as to whether the treatment system is approved or disapproved. If the treatment system is approved, the Respondent shall sample the performance of the system in accordance with the attached sampling schedule, Exhibit D.

10. There has been no adjudication of the claims, defenses, counterclaims and crossclaims in this action except for the Court's Orders of August 25, 1983, and June 14, 1984, striking

switch  
w/ #8+9  
on P. 4  
Admin. Order  
Insert



Reilly's First, Second, and Third Affirmative Defenses to the United States' Amended Complaint and Reilly's Second and Fourth Affirmative Defenses to the State's Amended Complaint in Intervention.

11. The United States, the State, the City of St. Louis Park and Reilly desire to reach a mutually satisfactory settlement in this action.

12. It is in the public interest, the interest of the parties and the interest of judicial economy to resolve the matters to be covered by the terms of this Partial Consent Decree without protracted litigation.

D.

PURPOSES OF PARTIAL CONSENT DECREE

✓ The purposes of this Partial Consent Decree are to avoid prolonged litigation; *over the issue of drinking water treatment of S.L. Park wells #10 & 15* to permit expeditious implementation of the activities described herein; and to implement a drinking water *system* ~~treatment system in the City of St. Louis Park~~ designed to protect the public health and welfare and the environment from risks believed to arise from the presence of hazardous *substances* ~~substances, pollutants, or contaminants at St. Louis Park wells~~ No. SLP 10 and 15.

✓ Entry into this Partial Consent Decree does not constitute, and shall not be construed as, any admission of liability, wrongdoing or fault on the part of any party hereto. It is further understood and agreed that liability, wrongdoing and fault are in all respects specifically denied by Reilly, that any

payments by Reilly under the provisions of this Partial Consent Decree are made only for the purpose of compromise and avoidance of the expense of litigation, and that this Partial Consent Decree shall not constitute or be construed as an adjudication or finding on the merits of any violation of law or any other wrongful conduct or practice on the part of Reilly or any other party.

E.

DRINKING WATER TREATMENT SYSTEM

Reilly hereby commits to treat the drinking water for St. Louis Park by installing a granular activated carbon system (GAC) at St. Louis Park municipal wells 15 and 10 and to monitor and operate the GAC system(s) until all samples taken at the wellhead for each of the previous five consecutive years are below the drinking water criteria for PAH and below the advisory levels for each of the previously three consecutive years. This program is set forth in Exhibit A to this Partial Consent Decree, and is *hereinafter referred to as the "Work."* ~~titled and constitutes the Work.~~ Exhibit A is made an integral and enforceable part of this Partial Consent Decree.

Should any statement in this summary of the requirements of the Work be inconsistent with or different from the requirements as stated in the Work, the Work requirements shall govern and this summary shall not alter those requirements in any way.

F.

RESOLUTION OF DISPUTES

If a dispute arises as to the meaning, application, or implementation of any part of this Partial Consent Decree, other than with respect to governmental approval of submittals, Reilly shall provide the Regional Administrator<sup>U.S. EPA, Region II</sup> and the MPCA Director with a written statement supporting its position in the dispute. The Regional Administrator and the MPCA Director shall review all statements, and issue a joint determination of the dispute. The determination shall be sent to all Project Leaders designated under Part ~~M~~<sup>L</sup> below, shall become an integral part of this Partial Consent Decree, and shall be binding on the parties thereto, unless Reilly or St. Louis Park applies for review of the determination by this Court within ten (10) days of the determination. In review of a joint determination by the Court, Reilly and St. Louis Park shall have the burden of demonstrating that the joint determination is arbitrary and capricious in light of the purposes of this Partial Consent Decree and the expertise of the EPA, MPCA, and MDH on matters of science, technology, health, and public policy related thereto. If the Regional Administrator and the MPCA Director are unable to agree upon a joint determination, they shall so notify all Project Leaders, and any party may petition the Court for review of the matter within twenty (20) days of the date of notification.

In computing any period of time for Court review under this Partial Consent Decree, the day of the last act, event, submittal or default from which the designated period of time begins to run is not included. The last day of the period so computed is included unless it is a Saturday, Sunday, or legal holiday in Minnesota.

G.

REVIEW OF SUBMITTALS

Whenever a submittal is required in the Work, the provisions of this Part shall apply.

1. The Regional Administrator and the MPCA Director shall review all submittals made by Reilly as required by the Work within twenty-one (21) calendar days of receipt and, by the twenty-first day, or the first working day thereafter, shall notify Reilly of their approval, modification, or disapproval of the submittal. In the event the submittal is approved by both the Regional Administrator and the MPCA Director, it shall become an integral part of this Partial Consent Decree. In the event that the submittal is disapproved in whole or in part by either the Regional Administrator or the MPCA Director, the notification shall specify the inadequacies and the necessary amendments or revisions. In the event the submittal is modified, the notification shall specify the modifications and the reasons therefor.

2. Within twenty-one (21) calendar days of the date of any notice of modification or disapproval, or on the first working day thereafter, Reilly shall (1) submit the required revisions, (2) respond to the designated modification, or (3) state in writing the reasons why the submittal, as originally submitted, should be approved.

3. If within fourteen (14) calendar days from the response under subpart 2 above or the first working day thereafter the parties have not reconciled all issues in disagreement, the Regional Administrator and the MPCA Director may revise the submittal as they deem necessary. All changes approved or made by the Regional Administrator and the MPCA Director shall become an integral part of this Partial Consent Decree and binding upon the parties thereto, unless Reilly applies for review by this Court within ten (10) days of the determination by the MPCA Director and Regional Administrator. In review of a joint determination by the Court, Reilly shall have the burden of demonstrating that the joint determination is arbitrary and capricious in light of the purposes of this Partial Consent Decree and the expertise of the EPA, MPCA, and MDH on matters of science, technology, health, and public policy related thereto. If the Regional Administrator and the MPCA Director are unable to agree upon a joint determination, they shall so notify all Project Leaders, and any party may petition the Court for review

of the matter within twenty (20) days of the date of notification.

4. The United States, the State, and Reilly shall provide the opportunity to consult with each other during the review of submittals or modifications.

5. If the MPCA Director or the Regional Administrator fails to notify Reilly under subpart 1 above, such failure to notify shall not be deemed an approval. However, the resulting delay beyond the notification date shall be deemed good cause for an extension of time under Part L below.

6. If the MPCA Director and Regional Administrator are unable to agree upon a joint determination under this part, they shall so notify Reilly. In the event approval is granted by one but not both of the Regional Administrator and the MPCA Director, such single approval shall not authorize Reilly to proceed. Any party may petition the Court for review of this matter within twenty (20) days of the notification of no agreement.

H.

CREATION OF DANGER

In the event the Regional Administrator, the EPA On-Scene Coordinator (Project Leader), or the MPCA Director determines that activities of Reilly in implementing or in non-compliance with this Partial Consent Decree, or any other circumstances or activities relating to the site, may create or contribute to a threat to the health or welfare of the people on the site or in

the surrounding area or to the environment, the Regional Administrator, the EPA On-Scene Coordinator, or the MPCA Director may order Reilly to stop further implementation of this Partial Consent Decree, or portions thereof, for such period of time as needed to abate the danger. During this period of time, the Regional Administrator or the MPCA Director may suspend some or all of the obligations of Reilly under this Partial Consent Decree, as may be appropriate, and may extend the time schedules for implementation.

I.

REPORTING

Reilly shall submit written progress reports which describe the actions it has taken during the previous month in implementation of the requirements of this Partial Consent Decree. Such written progress reports shall also describe the activities scheduled to be taken during the upcoming reporting period. The progress reports shall be submitted by the tenth day of every month following the effective date of this Partial Consent Decree for the first year, and shall be submitted to:

Director, Solid and Hazardous Waste Division  
Minnesota Pollution Control Agency  
Attn: Site Response Section  
1935 West County Road B-2  
Roseville, Minnesota 55113

Director, Waste Management Division  
U.S. EPA, Region V  
Attn: Remedial Response Branch  
230 So. Dearborn Street  
Chicago, Illinois 60604

Thereafter, progress reports shall be submitted on an annual basis by March 15 of each year. The progress reports shall include a detailed statement of the manner and extent to which the procedures and dates set forth in the Work are being met. In addition, the progress reports shall include copies of all analytical data sheets relating to the subjects of this Partial Consent Decree received during the previous reporting period. Unless otherwise specified, progress reports and any other documents submitted pursuant to this Partial Consent Decree shall be sent by certified mail, return receipt requested, or shall be hand delivered, to the Project Leaders for the EPA and the MPCA as designated pursuant to Part M below.

The Regional Administrator and the MPCA Director may, in their discretion and consistent with the Work, direct in writing that reports be submitted to their respective agencies at different intervals or that no further reports need be submitted.

J.

#### LIQUIDATED DAMAGES

Upon the failure of Reilly to meet the requirements of this Partial Consent Decree, Reilly shall pay to the United States and the State equally divided liquidated damages in the amount of the sum of One Thousand Dollars (\$1,000.00) for each day of the first thirty days and in the amount of the sum of Five Thousand Dollars (\$5,000.00) for each day of delay thereafter unless the Court finds otherwise for good cause shown. Payment to the United



States shall be made to the Hazardous Substance Response Trust Fund of the Treasury of the United States. Payment to the State shall be made to the Environmental Response, Compensation and Compliance Fund of the Treasury of the State of Minnesota.

Upon the determination by the MPCA or EPA that Reilly is liable for a payment under this part, the MPCA or EPA shall give written notice to Reilly of the liquidated damages due and the basis therefor and shall provide Reilly an opportunity to explain why the noncompliance upon which the penalty is based should be excused in accordance with Part <sup>K</sup>~~X~~ below.

Upon the curing by Reilly of the noncompliance, the liquidated damages shall cease to accrue with respect to the particular matter described in the notice. *unless excused by the EPA + MPCA Reilly shall make payment at 20 days of the date* Nothing in this part shall be construed as prohibiting or limiting the United States <sup>the written notice is</sup> or the State's ability to seek civil penalties or other relief <sup>if justified</sup> available under federal or state law for any violation of a *provision due.* provision of this Partial Consent Decree. This part does not limit the Court's authority to use its equitable powers to achieve the purposes of this Partial Consent Decree. *Any court review of lig. dam. shall be limited to whether Reilly did in fact fail to meet the req. of this P. Consent Decree.*

#### DELAY OR PREVENTION OF PERFORMANCE

If any event occurs which may prevent Reilly from complying in whole or in part with any provision of this Partial Consent Decree, or may prevent timely compliance therewith, Reilly shall

notify the Regional Administrator and the MPCA Director in writing within a reasonable time but in no event later than three (3) days after learning of the event or anticipated event, as appropriate, describing in detail the precise cause or causes of the event, the measures taken or to be taken by Reilly to prevent or minimize the event or consequences of the event, and the timetable by which those measures will be implemented. Reilly shall adopt all reasonable measures to avoid or minimize the event or consequences of the event. Reilly shall supplement any notice provided for by this part with any additional information within a reasonable time, but not later than fourteen (14) days, after learning of such information.

The Regional Administrator and the MPCA Director are authorized to grant jointly extensions of the time schedules set forth in the Partial Consent Decree upon showing of good cause therefor. An increase in the cost associated with complying with the provisions of this Partial Consent Decree shall not constitute good cause nor excuse Reilly from a failure to comply under the provisions of this part.

A failure by Reilly to provide written notice of the event, or anticipated event, as required above, shall result in Reilly not being excused from liquidated damages for a failure to comply with the requirements of this Partial Consent Decree.

L.

PROJECT LEADERS

Reilly, St. Louis Park, the EPA, and the MPCA shall each designate a Project Leader and an alternate for the purposes of overseeing the implementation of this Partial Consent Decree, and shall notify the other parties in writing as to the designation of its Project Leader and alternate within ten (10) days of the effective date of this Partial Consent Decree. Either party may change its designated Project Leader and alternate by notifying the other parties, in writing, of the change.

To the maximum extent possible, communications among the parties concerning the terms and conditions of this Partial Consent Decree shall be made through the Project Leaders. Each Project Leader shall be responsible for assuring that all communications from the other Project Leaders are appropriately disseminated and processed.

The Project Leaders and alternates shall have at least the authority to (1) take samples or direct that samples be taken; (2) direct that work stop for a period not to exceed 24 hours whenever a Project Leader or alternate determines that activities at the site may create a danger to public health or welfare or the environment; (3) observe, take photographs and make such other reports on the progress of the work as the Project Leader or alternate deems appropriate; (4) review records, files and documents relevant to the Work; and (5) make or authorize minor

filed modifications in the Work or in techniques, procedures or design utilized in carrying out the Work which are necessary to the completion of the project. All field modifications must be approved orally by the EPA and MPCA Project Leaders to be effective. Within forty-eight (48) hours following the modification, the Project Leader who requested the modification shall prepare a memorandum detailing the modification and shall provide or mail a copy of the memorandum to the other Project Leaders.

The EPA Project Leader under this paragraph is the On-Scene Coordinator and shall have the authority vested by the National Contingency Plan (40 C.F.R. Part 300).

M.

ACCESS

The City of St. Louis Park has provided an access agreement for the property upon which the treatment facilities required by this Partial Consent Decree will be located. The access agreement which is attached hereto as Exhibit B provides authority for Reilly, the MPCA, MDH, the EPA or their authorized employees or agents to enter the property upon which the treatment facilities will be located at all reasonable times for the purposes of: implementating the tasks of the Work required by this Partial Consent Decree, reviewing the progress of implementation of the Work; conducting such tests as the Regional

Administrator, the MPCA Director or their Project Leaders deem necessary; and verifying data submitted.

N.

REILLY ASSIGNMENT OF RESPONSIBILITIES TO THE <sup>CITY</sup> CITIES OF  
ST. LOUIS PARK OR ~~HOPKINS~~ AND ASSURANCE OF PERFORMANCE

Nothing in this Partial Consent Decree shall be construed to prevent Reilly, by separate agreements, from assigning its responsibilities hereunder to the City of St. Louis Park. Any such assignment shall not be valid until approved in writing by the MPCA Director and the Regional Administrator. In the event of the failure of St. Louis Park ~~or Hopkins~~ to implement in a timely and satisfactory fashion any of the activities required of it under any such assignment, Reilly agrees to complete in a timely and satisfactory fashion all such activities. Reilly's performance of such activities shall not prejudice its right to recover the costs thereof from St. Louis Park.

O.

PAYMENTS BY REILLY - FUTURE COSTS OF THE UNITED STATES  
AND THE STATE

The State and the United States will annually submit to Reilly an itemized statement of their expenses related to implementation of the Work. Following receipt of the itemized statement, Reilly shall pay, within sixty (60) days, the Environmental Response Compensation and Compliance Fund of the Treasury of the State of Minnesota and the Hazardous Substance Response Fund of the United States Treasury the required sums.

P.

HOLD HARMLESS AGREEMENTS

Reilly agrees to defend St. Louis Park, the State, and the United States and to save and hold St. Louis Park, the State and the United States, their agents and employees, harmless (1) from any and all claims or causes of action arising from or on account of acts or omissions of Reilly, its officials, officers, directors, agents, contractors, servants, employees, successors and assigns in carrying out, or failing to carry out, activities required of it under this Partial Consent Decree, and (2) from any and all claims or causes of actions against St. Louis Park, the State, or the United States alleging damages of any sort, including diminution in property values, because of contamination by coal tar or coal tar derivatives released at the site.

Q.

OTHER CLAIMS

Nothing herein is intended to release any claims, causes of action or demands in law or equity against any person, firm, partnership, corporation or governmental entity not a party to this Partial Consent Decree for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation or disposal of any materials or hazardous substances at, to, from, or in the vicinity of the site. Except as specifically provided in Part U below, this Partial Consent Decree shall not estop or limit any legal claims

of the State or the United States, including, but not limited to, claims related to releases of hazardous substances, contaminants, or other pollutants. Neither the State nor the United States shall be held as a party to any contract entered into by Reilly to implement activities pursuant to this Partial Consent Decree.

R.

OTHER APPLICABLE LAWS

All actions required to be taken by Reilly pursuant to this Partial Consent Decree shall be undertaken in accordance with the requirements of all applicable local, State and Federal laws and regulations, including laws and regulations related to occupational safety and health. In the event there is a conflict in the application of federal or state law or regulations, the more stringent of the conflicting provisions, as determined by the Regional Administrator or the MPCA Director, shall apply.

The MPCA and the EPA agree to use their best efforts consistent with their legal authority and public responsibility to assist Reilly and its contractors in obtaining permits or approvals from local, state or federal agencies.

S.

COVENANT NOT TO SUE

To resolve the issues presently existing between the parties hereto with regard to implementation of a drinking water treatment system ~~for the City of St. Louis Park~~ at St. Louis Park Wells 10 and 15 and to avoid further litigation concerning such

issues based upon information known by the parties when settling this matter, the United States and State agree <sup>that,</sup> ~~have~~ following the fulfillment of commitments made by Reilly in this Partial Consent Decree, that the United States and the State covenant not to sue Reilly and its officers and employees for any claim or cause of action cited in the complaints or the Administrative Order for the implementation of a drinking water treatment system at St. Louis Park wells 10 and 15. This covenant not to sue shall not cover any other claims or prayers for relief alleged in the complaints, including but <sup>not</sup> ~~^~~ limited to the reimbursement of expenses, except for such expenses which are reimbursed pursuant ✓ to the terms of Part <sup>0</sup> ~~2~~ of this Partial Consent Decree.

The United States and the State specifically retain authority to enforce the terms of this Partial Consent Decree or to take any action authorized by federal or state law if Reilly should fail to meet the degree of performance specified by this Partial Consent Decree or in any other way fail to maintain compliance with this partial Consent Decree. Nothing herein shall be construed to limit the authority of the United States or the State to undertake any action against any person, including Reilly, in response to conditions which may present an imminent and substantial endangerment to the public health, welfare or the environment, <sup>or</sup> ~~and~~ which may require the incurrence of response costs.



T.

PRODUCTION OF DATA

Reilly agrees to provide the Regional Administrator and the MPCA Director within ten days of the entry of this Partial Consent Decree copies of all data on ~~soil~~, ground water conditions and contamination in St. Louis Park and adjoining communities in its possession, custody, or control (including that possessed by consultants who have worked on the Reilly matter) which has not previously been produced in the course of the litigation to either the United States or the State.

U.

NO CLAIMS AGAINST STATE AND FEDERAL SUPERFUND

Reilly and St. Louis Park agree to make no claims for expenses related, directly or indirectly, to implementation of the terms of this Partial Consent Decree against the federal Hazardous Substance Response Trust Fund established under the Comprehensive Environmental Response Liability and Compensation Act, 42 U.S.C. §§ 9601, et seq. or the Environmental Response, Compensation and Compliance Fund established under the Minnesota Environmental Response and Liability Act, Minn. Stat. ch. 115B (1983 Supp.).

V.

SEVERABILITY

It is the intent of the parties hereto that the provisions of this Partial Consent Decree shall be severable, and should any

provisions be declared by a Court of competent jurisdiction to be inconsistent with the controlling law, and therefore unenforceable, the remaining clauses shall remain in full force and effect.

W.

EFFECTIVE DATE

This Partial Consent Decree is effective upon the date of its entry by the Court.

X.

FINANCIAL RESPONSIBILITY

Within thirty (30) days after the effective date of this Partial Consent Decree, Reilly shall submit to the Regional Administrator and to the MPCA Director, for review and approval, financial assurance, guaranteeing performance of the work specified in the Work, in the amount of five million dollars (\$5,000,000.00).

Financial assurance may be in the form of a performance bond, escrow account or other financial instrument satisfactory to the EPA and the MPCA guaranteeing performance of the work specified in the Work.

Y.

LIABILITY INSURANCE

Within thirty (30) days of the effective date of this Partial Consent Decree, Reilly shall provide the Regional Administrator and the MPCA Director with current certificates of insurance

certifying coverage for general liability which may arise in carrying out this Partial Consent Decree with minimum limits of one million dollars (\$1,000,000.00) per occurrence, an annual aggregate of at least two million dollars (\$2,000,000.00) per occurrence, exclusive of legal defense costs, for bodily injury and property damage liability combined, and containing the provision that the insurance shall not be cancelled for any reason except upon thirty (30) days written notice to Reilly, the Regional Administrator, and the MPCA Director.

These insurance limits are not to be construed as maximum limits. Reilly is solely responsible for determining the appropriate amount of insurance it should carry for injuries or damages that may result from the implementation of this partial Consent Decree.

Z.

CONTINUING JURISDICTION OF THE COURT

This Court specifically retains jurisdiction over both the subject matter hereof and the parties hereto for the purposes of enforcing, modifying or extending the terms of this Partial Consent Decree, or for granting any other relief not inconsistent herewith which the Court deems appropriate and just, for thirty years after the effective date, or thereafter if so ordered by the Court pursuant to motion of any party hereto in order to

accomplish the purposes of this Partial Consent Decree or for other good cause shown.

IT IS SO ORDERED:

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

DATED: \_\_\_\_\_

The parties hereto consent to the entry of this Partial Consent Decree.

REILLY TAR & CHEMICAL CORP.  
Defendant

BY: \_\_\_\_\_  
Thomas E. Reilly, Jr.  
President

BY: \_\_\_\_\_  
Edward J. Schwartzbauer  
Dorsey & Whitney  
Attorneys for Reilly Tar  
& Chemical Corporation

STATE OF MINNESOTA  
Plaintiff-Intervenor

BY: \_\_\_\_\_  
Cynthia C. Jepsen  
Chairperson, MPCA

BY: \_\_\_\_\_  
Thomas Kalitowski  
Director, MPCA

BY: \_\_\_\_\_  
Sr. Mary Madonna Ashton  
Commissioner, MDH

UNITED STATES OF AMERICA  
Plaintiff

BY: \_\_\_\_\_  
F. Henry Habicht II  
Assistant Attorney General  
Land & Natural Resources  
Division  
U.S. Department of Justice

BY: \_\_\_\_\_  
David Hird, Attorney  
Land & Natural Resources  
Division  
U.S. Department of Justice

James Rosenbaum  
United State Attorney

BY: \_\_\_\_\_  
Francis X. Hermann  
Assistant United States Attorney

BY: \_\_\_\_\_  
Courtney M. Price  
Assistant Administrator  
Office of Enforcement and  
Compliance Monitoring  
U.S. Environmental Protection  
Agency

Hubert H. Humphrey, III  
Attorney General

BY: \_\_\_\_\_  
Stephen Shakman  
Special Assistant  
Attorney General

BY: \_\_\_\_\_  
Dennis Coyne  
Special Assistant  
Attorney General

CITY OF ST. LOUIS PARK  
Plaintiff-Intervenor

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
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